Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Petition for Declaratory Ruling of Continental Airlines, Inc.	)	ET Docket No. 05-247

To: The Office of Engineering and Technology

COMMENTS OF
DES MOINES INTERNATIONAL AIRPORT

I. INTRODUCTION

The Des Moines International Airport (DSM) is a municipally owned and operated airport in the capital city of Iowa. DSM serves 1,990,000 passengers and more than 186 million pounds of cargo and mail go through the airport annually. Of the 32 carriers operating out of DSM, 15 are passenger air carriers and 5 are cargo carriers. DSM is also home to the Iowa Air National Guard as well as to 3 commercial fixed-based carriers and a number of other general aviation users. The DSM airport facility has, in addition to its government tenants, over 40 commercial tenants.

II. DSM IS ALARMED BY THE IMPLICATIONS OF CONTINENTAL'S PETITION

Continental Airlines, Inc. ("Continental") filed a Petition for Declaratory Ruling (the "Petition") in which it complains that the Massachusetts Port Authority ("Massport") has sought to prevent Continental from operating a "Wi-Fi" antenna in Continental's frequent flyer club lounge at Logan Airport. The Office of Engineering and Technology ("OET") has requested comments regarding that Petition. DSM files in support of the comments filed by Massport and Airports Council International – North America ("ACI-NA").

III. DSM's MISSION AND EFFORTS TO ENSURE AVAILABILITY OF WI-FI IN A SAFE AND SECURE ENVIRONMENT

DSM's Mission is

> **To provide and maintain high quality aviation services and facilities for the transport of people and goods to benefit the community and region in a safe, convenient, and efficient manner on a self-sustaining basis as a part of a global air transportation system.**

DSM urges the FCC to rule in a way that recognizes the special circumstances arising in the airport setting. In order to ensure that it continues to provide the best service in a safe, convenient and efficient manner, DSM has found it critical to employ centralized coordination and oversight in balancing the needs of multiple carriers, numerous tenants, and ensuring services, convenience, safety and

security of the traveling public. Communications is a critical part of the airport infrastructure. It is critical to every aspect of airport operation and to all users.

As noted by others, there are significant legal and practical questions concerning the application of the Over-the-Air Reception Devices ("OTARD") Rule in the airport context. And, even if OET takes a different view, OET should either allow Masspo0rt to proceed under the "central antenna exception," or under a waiver.

IV. OET SHOULD TAKE NO ACTION TO RESTRICT AN AIRPORT'S ABILITY TO PROVIDE WI-FI SERVICE

DSM offers Wi-Fi service to the public. It does so under a neutral host model. After much research, DSM developed, built and began operating an airport-wide neutral host Wi-Fi system providing a centrally controlled and managed service for use by the traveling public, airport tenants, airlines, DSM's aviation department and the City of Des Moines police, fire and public safety applications at the airport.

The study and considerations giving rise to DSM's decision to adopt this model may be instructive.

In January of 2001, DSM's staff began the research onto wireless applications by attending the first Wireless Airport Association meeting in Los Angles, California. There were about 350 attendees representing airports, airlines, consultants and equipment venders.

The agenda for the conference centered on the implementation of wireless applications in an airport environment. The program covered the basics of wireless

technologies, spectrum management strategies, cost/payback models, and a presentation on the future of wireless technologies.

From that program, it became clear that there were both problems and service enhancement opportunities facing airports regarding the new emerging wireless technologies.

The problems appear to be the management of the implementation of various wireless systems and the limited spectrum on which they depend. A few of the obvious interests for using wireless within the airport are such applications of mobile check-in podiums, roving ticket agents, lost bag scanners, handheld rental car check-in, and passenger wireless internet access. At DSM, for example, there are more passenger carriers than there are gates so that gates and other areas within the airport are subject to priority but non-exclusive use. The airport has a high density of diverse users and tenants of the airport with competing systems and uses. As applications become more and more commonplace, the need to coordinate the use of the limited radio frequency (RF) spectrum within the limited airport property increases. Unlike devices limited to reception, provision of Wi-Fi, as in the case of Continental's Petition, results in the propagation of signal. As DSM studied the issue, it realized the placement of transmitters and the wattage at which they operate posed interoperability problems among the many carriers' and tenants' systems and with life safety equipment used at the airport. The only workable solution to recognize the multiplicity of passenger, airline, tenant, safety and

security needs was to make available a centrally managed Wi-Fi system that could ensure systematic across-the-airport prioritization of bandwidth with public safety applications.

ARINC (a corporation that was initially incorporated in 1929 as Aeronautical Radio, Inc. when it was chartered by the Federal Radio Commission (now FCC) to serve as the airline industry's "single licensee and coordinator of radio communication outside of the government") educated the DSM staff on the potential problems in airport settings with failing to have a centralized approach to the management of competing wireless RF uses. DSM's passenger terminal is a large structure where 16 carriers share, on a priority but nonexclusive basis, 13 gates. There are not discrete terminals for each passenger carrier. And tenants and vendors operate in close proximity with passenger traffic. Without a centralized system available for the use of all, it was apparent that each interest could attempt to install its own system with the consequence of there being no good system since each competing systems might increase the power of their system to get a "better signal," etc. While it is nice to think everyone is a "good neighbor" and would respectful of non-interference from bleeding signal propagation, ARINC's investigation and counsel persuaded DSM that leaving failure to provide a neutral host platform and allowing each entity to provide its unique system would ultimately meet no one's needs.

In April of 2001, DSM commissioned a RF survey of the DSM airport campus

as the first step in a process to provide wireless services at DSM. The survey scope also included access point layout recommendations to for a neutral host Wi-Fi system for the terminal and concourse. After study and a Request for Proposals for an Airport Wireless Management Contract to manage an airport-wide neutral host wireless system, a contract was awarded and in 2003, DSM began delivering Wi-Fi services to the airport terminal and concourse.

DSM believes that, given the high density of the user base, only through centrally connected and managed systems can Wi-Fi be predictably reliable. The neutral host Wi-Fi system installed at the DSM is designed to provide dependable secure ambiguous service to all the current and potential users at the airport while preserving bandwidth when necessary for public safety application as the need arises. The Des Moines police, fire and first responders depend upon Wi-Fi and, importantly, the neutral host system at DSM includes the ability to prioritize uses so that, in the event of emergency, the system will automatically give priority to ensure communication for emergency services.

DSM urges OET to bear in mind that DSM and many other airports have introduced Wi-Fi service under many different models, each adapted best to local conditions. DSM has worked to address the needs of *all* the stakeholders at the airport and to provide the best possible services in a safe, secure environment. And DSM urges OET, however it decides this case, not to hinder the ability of airports, such as DSM, from provide wireless services through use of neutral host systems.

V. THE OTARD RULE SHOULD NOT BE EXTENDED IN THIS CASE.

In its comments, ACI-NA raises a number of arguments, including (i) that application of the OTARD Rule in Massport's case might implicate the takings clause of the Fifth Amendment; (ii) that only Continental, and not Continental's paying customers, are protected by the Rule; and (iii) that the Rule does not give Continental the right to transmit a signal outside its leased space. ACI-NA also notes that Continental has not proven its claim of business use of its Wi-Fi antenna and that any such use is incidental to the use by passengers. DSM supports all of these arguments, and urges OET not to extend the OTARD Rule in the airport context at all.

VI. OET MUST RECOGNIZE FIRST RESPONDERS CAN AND DO RELY ON WI-FI

DSM is gravely concerned OET may restrict the ability of DSM and other airports to protect the safety and security of passengers. Massport has argued that its actions were protected under the safety exception to the OTARD Rule; DSM agrees. Airports must have broad latitude in the safety area – it is simply impractical to expect that OET and the FCC can address airport safety issues on a case-by-case basis in a timely and effective fashion. Consequently, airports should be given wide latitude to apply the safety exception to the OTARD Rule. Continental and the other airlines, as well as other airport tenants, are extremely

sophisticated and knowledgeable organizations; they do not need to be protected from their landlords in the way that the OTARD Rule suggests is appropriate for individual homeowners or apartment residents.

Regardless of whether OET believes unlicensed Wi-Fi frequencies should not be used for mission-critical applications; they are. Des Moines police, fire and other first responders currently are dependent upon Wi-Fi frequencies. While OET may believe they shouldn't be, it is not helpful to DSM's mission to ignore the practical fact that they are. It is for that reason DSM built into its neutral host system signal prioritization that ensures that first responders can communicate in the event of an emergency.

VII. IF OET CONCLUDES THE RULE DOES APPLY, AIRPORT URGES OET EITHER TO APPLY THE CENTRAL ANTENNA EXCEPTION TO THE CASE OF MASSPORT, OR TO GRANT MASSPORT A WAIVER.

If OET concludes that the Rule does apply, notwithstanding the arguments of ACI-NA to the contrary, there is ample evidence to justify either the application of the central antenna exception of the Rule, or the grant of a waiver under 47 C.F.R. 1.4000(d).

Although the central antenna exception was crafted for use in the multi-family residential video context, we believe that it can and should be adapted to the airport context. Airports are not condominiums or townhouse developments. They are much more complicated environments, both in terms of their economic complexity and in terms of the many types of communications activities that take

place on their premises. Chaos is not a plan and a central antenna option can solve many problems for both airport managers and tenants. While some tenants may prefer to have their own antennas, in some cases – depending on local conditions -- this may be an unreasonable desire in the close quarters of an airport. As discussed in the ACI-NA comments, allowing individual users free rein can make it impossible for others – including the airport – to operate effectively. In that case, the airport must be allowed to manage the facility for the benefit of all.

Airports have every incentive to deliver good quality service to every person in their terminals – in fact, this was in part what motivated Massport's actions. Consequently, Massport and other airports can be expected to ensure that the quality of signal reception over a central system will be adequate for all users. Similarly, it seems unlikely that in Continental's case there would be any unreasonable increase in cost or any unreasonable delay in obtaining access to Wi-Fi service. Thus, Massport should be allowed to operate under the central antenna option.

Finally, we believe that Massport's concerns are "highly specialized and unusual," and thus warrant a waiver under 47 C.F.R. § 1.4000(d). Airports are by definition highly specialized and unusual environments, and Logan has particular concerns. If the central antenna option does not apply, we urge OET to grant Massport a waiver.

CONCLUSION

DSM supports the comments of ACI-NA and Massport, and urges OET to deny the Petition.

Respectfully submitted,

DES MOINES
INTERNATIONAL AIRPORT

By: _____
Susan A. Low

Assistant City Attorney
400 Robert D. Ray Drive
Des Moines, Iowa 50309-1891

Voice (515) 283-4072
Facsimile (515) 237-1748

October 11, 2005

Certificate of Service

I hereby certify that I have caused to be mailed this 11th day of October, 2005, copies of the foregoing Comments of the Des Moines International Airport, by first-class mail, postage prepaid, to the following persons:

Holden E. Shannon
Senior Vice President
Global Real Estate & Security
Continental Airlines, Inc.
1600 Smith Street – HQSVP
Houston, TX 77002

Robert Edwards
Staff Vice President
System Operations
Continental Airlines, Inc.
1600 Smith Street – HQSTK
Houston, TX 77002

Donna J. Katos
Managing Attorney – Litigation
Thomas Newton Bolling
Senior Attorney – Regulatory
Continental Airlines, Inc.
1600 Smith Street – HQSLG
Houston, TX 77002

Henry M. Rivera
Vinson & Elkins, LLP
The Willard Office Building
1455 Pennsylvania Avenue, NW
Washington, DC 20004-1008
Counsel for Continental Airlines, Inc.

Christine M. Gill
McDermott Will & Emery
Suite 1200
600 13th Street, NW
Washington DC 20005-8087
Counsel for Massachusetts Port Authority

Patricia A. Hahn
General Counsel
Airports Council International-North America
Suite 500 1775 K Street, N.W.
Washington, DC 20006

Matthew C. Ames
Miller & Van Eaton, P.L.L.C.
Suite 1000
1155 Connecticut Avenue, N.W.
Washington, D.C. 20036
Attorneys for the Airports Council International - North America

Office of the Secretary*
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20054
Attn: Office of Engineering and Technology, Policy and Rules Division

*Service by ECFS

Susan A. Low
Assistant City Attorney
Des Moines, Iowa 50309